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May 17, 2016

VIA ECF

Hon. Brian M. Cogan
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 1201

Re: *In Re Motion for Civil Contempt by John Doe, 12-mc-557 (BMC)*

Dear Judge Cogan:

I represent the Associated Press (“AP”) in the captioned matter. I write in response to this Court’s Minute Entry and Order dated May 11, 2016 and subsequent Minute Entry and Order dated May 12, 2016 (the “Orders”) concerning the unsealing of multiple documents of record in this case, the placement of those unsealed documents on the corresponding public docket (16-mc-706), and the continued sealing of certain other documents. The AP thanks the Court for its careful attention to the matter of unsealing, and writes only to raise three discrete points regarding documents the Court has determined should remain under seal.

First, it does not appear that Document No. 76 has been entered on the docket in either 12-mc-557 or 16-mc-706. As no docket entry for this document is apparent, the AP cannot assess whether it wishes to raise additional arguments as to its unsealing. The AP respectfully requests that a docket entry be added for this filing. Further, it appears that several docket entries previously viewable on the dockets are no longer viewable. The AP asks that the docket entries be returned to the docket. *See* Doc. Nos. 84, 85, 87, 153. Further, one document is viewable on 12-mc-557, but is not viewable on 16-mc-706. *See* Doc. No. 142.

Second, the AP understands that the Orders maintain under seal not only Mr. Sater’s Pre-Sentence Report (“PSR”), but also documents that reference portions of that report. While the Second Circuit has made clear that PSRs typically remain confidential for a variety of compelling reasons, *United States v. Charmer Industries, Inc.*, 711 F.2d 1164 (2d Cir. 1983), a wholly different analysis applies when portions of a PSR are used *by a party to persuade a Court* to act in a particular manner, such as in the context of sentencing memoranda. *See United States v. Munir*, 953 F. Supp. 2d 470, 478 (E.D.N.Y. 2013) (where defendant’s sentencing submission included memorandum with excerpts from PSR, court observed that “[i]nterests in maintaining



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the confidentiality of the presentence report and privacy of innocent third parties are compelling [b]ut wholesale suppression of those documents cannot overcome the press's and public's strong interest in monitoring sentencing decisions"). Similarly, in *United States v. Huntley*, the court released information about ongoing criminal investigations that identified the previously anonymous officials the defendant had taped while acting as a government cooperator in an attempt to reduce her sentence. 943 F. Supp. 2d 383, 384 (E.D.N.Y. 2013). The Court held that even though such information was sensitive, it should be released because it comprised an important component of sentencing papers that implicate a core function of the judicial branch. *Id.* at 385 ("Particularly important is transparency in our judicial branch. Its power depends upon the people's confidence. That confidence is founded on the fact that the material judges rely on for decision is available to the public—decisions by which judges' work is judged."). While the court was, of course, cognizant of the effect such release might have on ongoing investigations, it also observed that "[t]he sense of fairness by the American public and assumption of innocence before conviction provides considerable insurance against the dangers of unsealing." *Id.* at 387. In light of the substantial amount of information that has already been made public, the AP respectfully requests that all documents that reference portions of the PSR for the purpose of persuading the Court to act be released to the public. To the extent that any particularly sensitive information is contained in those references, it should be redacted, and the documents otherwise unsealed.

Third, and finally, the AP notes that certain documents that remain sealed by this Court do not, by virtue of their docket entry, yield much information as to why they are the proper subject of sealing. *See, e.g.* Doc. No. 87 ("Letter Requesting an Extension of Time by U.S.A.").¹ The AP requests that the Court make available a more detailed explanation of the reason sealing is justified as to that document.

The AP again thanks the Court for its time and consideration.

Respectfully,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: _____ /s/
Jay Ward Brown

cc: Counsel of Record via ECF

¹ Please note that Doc. No. 87 was listed on the docket at the time of the May 10, 2016 hearing. It appears to have been removed.